



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

SELDEN AS LEGAL HISTORIAN:

A COMMENT IN CRITICISM AND APPRECIATION.

[Continued.]

IV.

SELDEN'S aim, then, was no more and no less than the discovery of the historical truth embodied in truth-containing and truth-revealing sources. But it is one thing to conceive a noble and exacting standard for historical research, and it is quite another thing to be prepared to effect, and actually to effect, an achievement worthy of the standard. Was Selden a man whose ambitions far outran his actual capacities and his actual attainments? Or, was he fitted for his great task of grappling with the huge mass of difficult and intricate sources that barred his way to the "sanctuary of truth" into which he longed to enter? And, being fitted for that noble task, did he actually accomplish it? These are not irrelevant and impertinent questions, even as applied to Selden; and we must pause for a moment to attempt to answer them.

Both in natural qualities and in educational attainments he possessed a singularly broad and effective equipment for the carrying out of his purpose. Endowed with a wonderful memory, a fine and cool discrimination, an infinite patience and a capacity for intense industry, he commanded just those personal characteristics that are necessary for the collection, examination, and mastery of many scattered and difficult historical sources. To these features of temperament and mind Selden added an erudition so extensive and profound that John Milton but voiced the opinion of his age when he called him "the chief of learned men reputed in this land."

If we may judge from his writings themselves — and, after all, this is the best test of all — he possessed very special knowledge of all those sciences that are auxiliary to historical science and that assist the historian to that full mastery of materials which is so essential to the highest success. His works furnish indeed abundant evidence of his remarkable learning in biography and genealogy,

chronology, geography and chorography, sphragistics and heraldry, numismatics, archæology and art, epigraphy, and last — but most important of all — philology, palæography, and diplomatic.

Lord Clarendon, one of Selden's friends, declared that he was of "stupendous learning in all kinds and in all languages." Even if it be not literally true, however, that Selden was conversant with all languages, certainly — as his works bear witness — he had at his command an astonishingly large number of the western and the eastern tongues. He had indeed, as we have already seen, the highest opinion of the value of philology in historical inquiry. We should now also recognize the fact, fully and appreciatingly, that he not only believed in philological studies for other historians, but that he likewise believed in them for himself; for he certainly used his thorough philological knowledge to the best possible advantage in the task of solving his many problems in legal history.

If we remember that his work was all accomplished long before Mabillon founded the sciences of palæography and diplomatic by his great treatise *De re diplomatica* in 1681 and long before Hickes's monumental work appeared in 1703-1705, Selden's knowledge of handwritings and of documents is also of great credit to his scholarship. From the early days, when he copied records for Cotton, on down to the very last years of his life Selden was busy with manuscripts; and though no *école des chartes* was as yet ready to assist him in his studies, nevertheless, inspired by his high scholarly aims, he learned in his own school of personal examination and employment of many unprinted materials. He needed these materials for his own writings and for his editions of the works of others, and he needed them also for the practical purposes of his clients and of Parliament; and, needing them, he sought out their secrets by the aid of his own intelligence and toil and by the practical guidance of other investigators like himself. Very many passages of his writings not only disclose a delight in palæographical and diplomatic studies in and for themselves, but exhibit also a discrimination and a skill in the actual historical use of his materials worthy even of work that is now done in the light of all that Mabillon, Hickes, Madox, Kemble, Hardy, Maitland, and other scholars have taught and still are teaching the searchers of manuscript sources.

But perhaps, after all, the most valuable feature of his preparation for the work of legal historian was his legal training itself.

Undoubtedly his activities as a conveyancer, as an advocate at the Bar, and as a lawyer member of Parliament largely developed those capacities for accurate definition and statement, for clear and subtle analysis, for sound legal reasoning, and for the judicious sifting and use of evidence, which we discover in his writings. By training and by profession an English common lawyer and not himself claiming to be more than that, his legal studies yet extended far beyond the boundaries of the English law itself. He was conversant with the legal development of European and of eastern countries, and we may feel sure that if legal development in America had been in his day somewhat more advanced than it actually was, he would have been conversant with that too. By this familiarity with various legal systems he obtained a broad comparative point of view from which to look at legal development, and he acquired too a knowledge of jurisprudential notions and principles that was of the highest moment to him in his legal historical investigations.

V.

It is thus clear that Selden approached his sources with an equipment, both as regards native qualities and acquired skill and knowledge, that promised great effectiveness in the critical examination of the structure and the meaning of texts, and great effectiveness, too, in the critical employment of those texts in his historical writings. Was that promise fulfilled? Was Selden a really good and effective critic of texts? And did he really proceed upon sound methods in the use of his texts for the discovery of truth and the building up of his historical works?

He deals harshly with those who indulge in "bold but ignorant criticism" of texts — and for the very reason that he himself, whether as author or as editor, is anything but a bold and an ignorant critic. In the examination of his materials for historical writing he is indeed quick to detect a forgery and a corrupt text. To get the true reading of a text he looks at the various editions and notes their points of agreement and disagreement; he compares also the printed copy with the text of the manuscript; and he examines transcripts from the records and from other sources. He takes account of glosses. In the assignment of a text to its right date he employs not only his knowledge of palæography and diplo-

matics, but also his knowledge of the history of law. His words in the preface to his edition of the works of Hengham may be looked upon not only as an excellent expression of the high aims of an imaginary ideal editor of texts, but also as a true and enlightening account of Selden's own efforts in his own editorial work. He remarks:

"Though divers copies of Hengham were examined in preparing this, yet could not a perfect one be extracted from them all. As one helped another, choice was so made that this might be the best; which yet is not without many faulty passages. So faithfully it is published from the manuscripts that even the false language, which by consent of old copies, appeared not to be the transcriber's, but proceeded from the age's either negligence or ignorance, is religiously retained. So should the lost monuments of antient writers be given to the publick; so should we abstain from wronging their MANES. Some places, that the erring hands of such as antiently copied him corrected, are by way (amongst other observations collected in the heat of the press) noted, and either by conjecture restored, explained, or marked with asterisks, left to better judgment. The varying of letter in the print, is only to lead the reader's eye the sooner to what he may look after."

After he has once accepted his sources as authentic, he then carefully weighs them individually, one by one, and assigns to each its proper place of importance in the construction of his historical account. Thus, he looks upon a final concord as an authority of exceptional standing in the time of Henry II. Of many chartularies that of the abbey of Abingdon is singled out and given first place in his narrative, because of its special importance. Upon a certain point the Venerable Bede is preferred to the Monk of Malmesbury, for the reason that Bede "might better have known." Sometimes he fully accepts the statements of other writers; sometimes he refuses to place entire credence in them; and sometimes he rejects them quite.

Looking now for a moment not at his criticism of sources as such, but rather at his method of employing them in the building up of his historical narrative, we find that his fundamental aim is to present the authorities as a ground for the fullest "freedom of the reader's judgment." As "a ground of free judgment" the sources themselves are very often "delivered at large." Important though it be, in forming an independent judgment, to see the very

words of the sources themselves, there is no doubt that Selden carries altogether too far his habit of inserting in his writings great undigested masses from the text of his authorities; for this feature of his work checks the flow of thought in an irritating way and interferes seriously with the reader's grasp of the whole argument. But this inclusion of the texts themselves forms part of Selden's plan to let the sources and the sources alone speak the historical truth that he is desirous of conveying to the reader. "I would not wish my history," he affirms, "should gain any strength of truth from my name alone, but from my authorities cited." His task consists in showing the facts of history as they are contained in reliable sources — and there his duty ends. The reader himself may use these facts of history to argue great points of polity and philosophy — yet in that Selden, as an historian merely, has no part. But of course he does much — very much — more than simply present the bare text of his sources. He uses his authorities as a basis for his own account of historical fact; and he assumes that he must, in the cause of historical truth, draw conclusions and inferences of various sorts from his sources. This is not going beyond the facts. It is merely a way of ascertaining and setting forth the facts.

What Selden insists on doing is to present the necessary and most trustworthy sources in support of his contentions as to what the facts of the past have been; and when he has accomplished that, the citation of other and lesser authorities is a "busy vanity of hours" with which he has no patience. His principle is stated in the preface to the *Titles of Honour*. He says here: "I have used authorities of best choice, without the vain ambition of citing more than I needed. The best or first I took always for *instar omnium*." In the preface to his *History of Tithes* he tells us that his "testimonies were chosen by weight, not by number"; and in his reply to Tillesley's attack upon him he again asserts — with a thrust at Tillesley: "I affected weight [of authorities], but the doctor only number."

Having selected his authorities, he next proceeds to interpret them, and to use them in the erection of his historical fabric. He brings all his care, all his skill, and all his erudition to bear in the interpretation of words and passages in his sources. Sometimes he seeks the advice of learned friends as to difficult points. But

he believes firmly in "liberty of interpretation" for every one, and takes full responsibility for his own efforts to arrive at the meaning of his authorities. He frequently gives in a summary way the contents or essence of his sources, such as statutes and charters. He often — very often — compares and checks his sources one with another, manuscript with printed copy, primary with secondary, doom and charter with chronicle, law treatise with year book and plea roll; and he notes and explains their points of agreement and of disagreement, in order that he may ascertain the historical truth. In a truly inductive way he bases conclusions upon his sources as to the existence or non-existence of rules and principles and institutions. But he is cautious and will not conclude in a point, either one way or the other, without sufficient evidence; and he insists too on viewing the sources in their historical setting and on looking behind the sources to ascertain whether actual practice may not be, after all, at variance with them. Sometimes he gathers up the testimony of his sources, either at the beginning or at the end of a long discussion, into a short summary. He points out, if possible, errors in the historical work of others; and, though he has the courage of his historical scholarship and conviction, he is also not afraid to admit that he himself may err and that on certain points he either is or may be ignorant.

We stated just now that he employed inductive processes in arriving at historical fact. In a very true sense his whole method was essentially and fundamentally an inductive method; and it was largely because he proceeded upon this scientific method that he had such slight regard for Tillesley and others who operated upon quite different principles. In more than one passage he hit hard at those who look only for proof of their own pet theories and shut their eyes to all evidence that tends to prove the contrary. "Nay," he asks in his reply to Tillesley, "do not my examples largely shew, that the layman was the sole grantor still? And for his [Tillesley] telling you that against me, that the patron gives them the bishop. What colour, what one syllable of colour is there for any such thing in his whole charter of Gundulphus? But he would have it so, and therefore he thought that everything proved it so." "And he [Tillesley]," says Selden, "follows the common example of them which have their brains converted into their chosen conclusions, and then think everything they meet withal,

proves what they dote on." In another passage he loses patience with Tillesley and asks: "Is this your logick, doctor? We use no such in the Inns of Court." This phrase — "We use no such [logic] in the Inns of Court" — discloses to us perhaps the cause of Selden's insistence upon inductive processes in historical inquiry. As a barrister he used those processes in the study and employment of one highly important set of legal sources — the reports of decided cases. As a legal historian he applied those same processes in his endeavour to make his historical sources tell him the story of the past.

VI.

We must now examine Selden's historical works with the object of observing what method, or methods, he employed in the arrangement of his subject-matter. Did he adopt the historical method, or did he adopt the systematical method, or sometimes the one and sometimes the other? And did he ever use the comparative method?

In his *Purpose and End in Writing the History of Tithes*, Selden remarks that his work on tithes is "framed according to succession of time" and that every such history should be similarly constructed. This phrase — "framed according to succession of time" — provides us with a clue from his own pen as to the usual method which he adopted in the arrangement of his materials; for it will be found that he usually constructed his works upon the historical method. This plan enabled him to follow the "thread of time" by arranging his subject-matter in periods and by then sharply marking off the one period from the other through the individual and distinctive characteristics of each. The historical plan or method was used in the *History of Tithes*; and it was adopted also in *Of the Office of Lord Chancellor*, *The Original of Ecclesiastical Jurisdiction of Testaments*, *The Disposition of Intestate's Goods*, and in other works.

But Selden has not made the mistake of marking off his periods one from the other stiffly and arbitrarily by mere dates or by mere single events. He has not made this mistake just because of his vast and intimate knowledge of the past and just because of his true historical sense and skill; for he saw clearly that human develop-

ment is a gradual development, and that the lines to be drawn by the historian, in indicating the stages of progress, should be wavy and flexible, not rigid and inflexible lines. We may take the *History of Tithes* as an illustration. At first sight this work does not bear out the contention, for in it Selden divides the Christian era into four periods, each covering four hundred years, separated one from the other by the years 400, 800, 1200, and 1600. But it should be well noted that he is careful to allow, at each boundary between these periods, a latitude of about twenty years for the free play of forces and events that distinguished the passing from one period on into the next; and that he is careful also to show us that there is some real reason why the years of latitude between the periods really mark a transition from one to the other. Thus, he shows us that not until the close of the first period can it be proved that tithes were paid; that the beginning of the third period is marked by the exaction of tithes by the Church; and that the first part of the period from about 1200 to about 1600 is distinguished by the growing power of Canon Law.

In all his writings on English legal development where the historical method of arrangement has been adopted he displays this same care in marking off and distinguishing periods. In general he divides the whole legal history of England into the period of the Anglo-Saxons and the age from the Norman Conquest down to his own day; but he also notes various minor periods within the broad limits of these greater periods, and these minor periods are usually marked off one from the other, for some good historical reason, by the reigns of prominent kings like Alfred, Æthelstan, Edgar, Henry II, John, Henry III, and the early Edwards.

His firm grasp of the past and his keen sense for the historical method are also manifested by his frequent references, often in picturesque terms, to great periods of development that are not narrowly limited by any definite boundaries. Thus, in one place he speaks of "inmost antiquity" and "the later ages" and in other places of "primitive times" and "the later ages," of "the eldest times of Christianity" in England, and of "the antientest times that we have in our year books." Similarly he sometimes sums up and contrasts immense periods of legal development in England by referring, for instance, to "the common laws of this Kingdom in antient time," "the later common law," and "the practised law

of this day." It is, too, because his sense for historical periods is so finely developed and because he believes that only by the noting of periods — only by the "most exquisite touchstone" of synchronism — can historical truth be properly revealed, that he frequently admonishes the reader to distinguish the "times" and is hard upon those who either fraudulently, or perhaps only negligently or ignorantly, confuse them.

In the writings composed according to the historical method there is usually some attempt to arrange the subject-matter for each period in a systematic way. But, for the most part, this attempt is not very successful; and — at any rate judged by standards of the present day — there sometimes seems to be rather the absence than the presence of anything that may be truly called a systematic arrangement. We may look for a moment at the *History of Tithes* as an illustration of his attempt at order. In the *Purpose and End in Writing the History of Tithes* Selden tells us that in this history he took up three matters: (1) the laws in regard to tithes, (2) the actual practice of paying them, and (3) the opinions held touching them. In general we find that this threefold arrangement lies at the basis of his treatment of the materials in each period; and, in addition, that he takes up at times certain special topics in a more or less systematic fashion. Thus, for example, in the period from about 1200 to about 1600 he gives the opinions of the divines, for purposes of "method," in a "threefold difference"; and in his account of tithes in England he arranges in a fivefold classification — "for order's sake" — all the original proceedings in temporal courts with regard to tithes. One might give many other illustrations of ordered treatment of his subject-matter within the separate periods; but somehow one feels that in this matter of systematic arrangement his work lacks the lucidity and the strength that one might have expected from him.

While some of Selden's works on legal development are thus fashioned after the historical method of arrangement according to periods, still others are fundamentally, or wholly, constructed upon the systematic method. The *Titles of Honour* is an example of this. Selden divides this work into two great parts. In the first part he takes up the so-called "supreme," and in the second part the so-called "subordinate" titles of honour, and in general he takes up the history of each title by itself from its origin on down throughout

its existence. Further illustrations of his systematical method of arranging his subject-matter are the *Privileges of the Baronage of England* and the *Judicature in Parliament*; for, although these works were not written primarily for scientific historical purposes, but rather for practical purposes of Selden's own day, they nevertheless trace the history of the various topics included within the scope of their systematical arrangement of subject-matter. In the *Privileges of the Baronage of England*, for instance, the main division of the work is into two parts which treat respectively of the privileges of the baronage collectively as "one estate together in the upper house" of Parliament and of their privileges, "as every one of them is privately a single baron." But, although the grand outline or scheme of the work is thus systematical instead of historical, nevertheless, under each separate heading of each of the two parts, the matter is taken up, at any rate partially, from the historical point of view; for Selden has largely adopted the chronological order in the presentation of his precedents.

Whether Selden wrote his work after the historical or after the systematical method he frequently also adopted the principle of comparison. His wide studies in the legal systems of many eastern and western lands gave him the broad outlook and the knowledge necessary to a comparative historian of law. In various passages in his writings he expresses his own sense of the importance of comparative studies, but in no passages more clearly than in the prefaces to the *History of Tithes* and *Titles of Honour* and in the *End and Purpose of Writing the History of Tithes*. There is here a perception of the fundamental maxim of all comparative studies, that the two or more things to be compared must first of all be studied and known separately and individually, and that only then can a comparison prove of any theoretical or practical value. He sees indeed, with great clearness, the necessity of studying by itself the history of law in each country and in each age, in order that the results thus obtained may be made the basis of an inductive comparison. By proceeding in this fashion the comparative legal historian may note the features that are common to the development of law in many countries and in many ages and also the features that are peculiar to one or more countries or one or more ages. In this way too the influences of one legal system upon another may be definitely traced, and the great outlines of legal development

throughout the centuries may be drawn with some scientific precision and thus with actual helpfulness in the guidance of the present and future generations of men. It is this world-wide survey of legal development which strikingly characterises the work of Selden and makes it of lasting significance in the history of comparative legal studies.

Selden's writings are full of his legal historical comparisons, but in certain of his works he has adopted this method more extensively and profitably than in others. His oriental works, such as the *Uxor Ebraica*, the *De Synedriis Veterum Ebraeorum*, and the *De Jure Naturali et Gentium*, contain valuable studies in comparative legal history, as do also his *Titles of Honour*, his *History of Tithes*, and certain of his other works. One illustration may be given of the use Selden made of these comparative studies in throwing light on legal development. In the *History of Tithes* he shows, primarily by the comparative method, how the modification of ecclesiastical canons by the common law of the land was not peculiar to England alone, but was also to be observed in many other countries.

VII.

Selden's defective literary style is perhaps the chief reason why his learned tomes are now little read except for reference and why his fame in literature rests fundamentally upon his *Table Talk* and upon that alone. Stilted, harsh, prolix, obscure, cumbrous, embarrassed — these are the words that the literary critics have used and these are the words that in general his style, both Latin and English, properly merits; and, yet, not all his works deserve all these hard words, and in most of them, indeed, there are good qualities of style that, in all justice, should receive due recognition and praise.

Probably no better illustrations of his stilted and cumbrous style can be found than in his *England's Epinomis*, *Analecton Anglo-Britannicon*, *Jani Anglorum Facies Altera*, and *The Duello*. But, if it be unfair to judge him by his early and less mature writings, an examination of his later and greater works, such as the *Titles of Honour* and the *History of Tithes*, will clearly show that even they, though undoubtedly marking a great advance toward naturalness and lucidity, retain nevertheless to a certain extent the old char-

acteristics. Indeed, the English writings are weighed down by countless quotations from the many original sources and foreign literatures of which Selden was master. Statements are frequently limited and restricted by long parentheses that all too often prevent a ready grasp of the whole thought intended to be conveyed. Sometimes matter is inserted that is really appropriate to some other part of the discourse and should have been placed there. Occasionally sentences are almost hopelessly involved and of inordinate length. Subsidiary and explanatory matter is often introduced to such an extent that the reader's attention is wearied and taken from the main argument. So, too, the reader is frequently — very frequently — led off into digressions of all sorts, sometimes on relevant, but perhaps even more often on irrelevant topics. These and similar features, occasioned partly by Selden's remarkable memory of the many things he has read and partly by a certain disregard of literary proprieties, constantly check the flow of thought and thus seriously interfere with the ready and sure grasp of the whole argument.

At the same time it must be admitted that, though Selden has many sentences and parentheses of great length and complexity, both his sentences and his parentheses are in most instances short. Usually his parentheses elucidate his meaning by limiting or explaining more general statements in the main body of the text. In general, too, his cross-references assist in clarifying the thought; though some of them more properly belong in footnotes or marginal comments than in the discourse itself. Even though the insertion of great masses of original sources be in Selden's hands a defect of style, it has nevertheless its good side in giving the reader a greater opportunity of passing a free and independent judgment. It should also not be forgotten that Selden exercises much skill in framing perspicuous definitions and in choosing appropriate individual words as well as clear and striking phrases. In many sentences and shorter passages, too, his style rises to a high level of lucidity, forcefulness, and freedom from the choking effect produced by the insertion of masses of original sources and by the indulgence in long and wearisome digressions.

Selden's style is ordinarily quite solemn and grim enough for the most solemn and grim of his readers; but at times this grey sky is lighted up by quaint and striking verses culled from many an out-

of-the-way place, by vivid and picturesque descriptions, and by flashes of humour and sarcasm. Take, for example, his description in *The Duello* of one of the "combats upon imposed crimes." "John of Ansley, Knight," writes Selden, "appealed Thomas Catrington, esquire, of treason, *viz.*, that he for a great sum of money yielded up the castle of St. Saviour's in the isle of Constantine in France to the French, when as he might well have defended it, having sufficient of all provision, in quâ causâ cum eodem armigero armorum lege obtulit se pugnaturum. The matter was upon divers doubts and obstacles delayed in Edward the Third's lifetime, and proceeded as little until 3 Richard II. . . . Day was appointed, and the place at Westminster. An exceeding conflux of people was from all parts of the kingdom. . . . A little time after, the defendant is thus demanded. 'Thomas of Catrington, defendant, appear to defend thy cause, for which Sir John of Ansley, knight and appellant, hath publickly and in writing appealed thee,' and thus thrice by an herald. At the third proclamation, the esquire appears mounted on a steed. . . . The esquire entering the lists on foot, the constable and marshal produce a certain indenture made before them, by consent of the parties, containing the articles of the accusation, which were there publickly read. Catrington began to offer exception at some of them, thereby thinking to have somewhat extenuated the blots laid on him. But the Duke of Lancaster seeing him in delays, with an oath openly menaced him, that unless, according to the Duello-laws, he would admit all in the indenture, which was drawn by his assent, as free from being taxed for insufficiency of form, he should be presently drawn and hanged as a traitor. Whereupon the esquire ceased from his exceptions, and intended only the combat. [Each combatant took oath of the truth of his cause, and that he was free from all use of magic.] The combat itself follows between them. First lances, then swords, afterwards fauchions are their weapons. The esquire had still the worst, even until Ansley, although with some hazard and doubt (as you may see in the author) got the adjudged victory."

At one place on the *History of Tithes* Selden says half facetiously and half seriously: "[This] is well justified by an old rimer, that in verse, which would grieve Apollo's heart to hear, sings [bishop] Athelbero's liberality to the monastery and expresses the tithes of fourteen villages, and other places given by him, and then comes

to two churches, that he afterwards appropriated to it, Bishorst and Ichorst, and names them only as they had bans or limits and parishioners; as

“ ‘Bishorst cum bannis, bannos cum parochianis,
Ichorst cum bannis, bannos cum parochianis.’ ”

There is quiet humour in the remark that the law in Scotland is as he has stated, “if we may believe the author [who says so], for though he speak very good language, yet he is of no such sound credit.”

The *Admonition to the Reader of Sempil's Appendix* and the *Reply to Tillesley's Animadversions upon the History of Tithes* are full of good things, and must be appreciated by any lover of the quieter art of effective polemics. Thus, in the *Reply*, he refers with sly sarcasm to Tillesley's sixteenth animadversion: “For that of Christmas day, I refer it to any man, that can but read, whether St. Chrysostom do not expressly say, that he learned it in the west. If the doctor [Tillesley] had told you, there had never been a St. Chrysostom, I could but have referred you to the books that mention him.” In another place he drily remarks at the end of a reference to one of Tillesley's animadversions: “Unless you [reader] think it unmannerly to ask him, what he cannot tell you; do so much as ask him, what he meant here ?” A page or two further on, in reference to another point made by Tillesley, Selden concludes: “But here the subject is such a thing, that the doctor may be pardoned for talking he knows not what, in it.” Again, he asks: “And why, good doctor [Tillesley], should the word *kings* there, make me think more of *Charles Martell*, than that the meeting with the word *doctor* anywhere, should presently make me think of *doctor Tillesley* ?”

VIII.

When the history of English legal science comes to be written — as some day it will be — the “legal antiquaries” of the earlier half of the seventeenth century will receive that attention which they merit. Too apt are we to-day to forget these earlier historians of law and to fancy that only in our own time have scholars seriously turned their attention to the tracing of English legal development. It was these earlier scholars — Camden, Cotton, Spelman, Hale,

Selden, and others like them — who laboured at the founding of a school of English legal history; and upon their labours all subsequent centuries have built. Clear discernment of the value of legal historical studies and effective work in the sources themselves, so characteristic of the antiquaries of three hundred years ago, formed a scholarly tradition that has lasted from that day to this. Though the chiefest fruits of that tradition have come to us in our own age in the treasured works of such legal historians as Stubbs and Maitland and Ames, we do well to remember that the glory of inaugurating this tradition of sound and useful learning in the records of England's legal past belongs not to the later, but to the earlier scholars.

The present article is offered but as a slight and fragmentary comment upon the writings of one — and perhaps the greatest and most brilliant — of those early legal historians. Further and more thorough study of the work of Selden will, it is believed, only increase our respect for his ideals and attainments. Our debt to him consists fundamentally in three things of the highest importance: his noble conception of history and of the office of the historian, his example in sound historical method, his contribution to knowledge of legal development in England and in other countries. In respect of these things he was a worthy co-worker with the best legal historical scholars of the Europe of his time; and now, three hundred years later, he is worthy to be given a place among the ablest representatives of the historical and comparative school founded by his labours and the labours of other scholars like him and destined to achieve even greater things in the future than it has achieved hitherto. Though great progress has been made in the centuries since Selden's time, still, much the same standard in aims and methods and achievements that we find in present-day scholars we find also in him. It was fitting that his name should be given to the society recently founded "to encourage the study and advance the knowledge of the history of English law." It is also fitting that his own efforts in that behalf should be more thoroughly known and appreciated.

Harold D. Hazeltine.